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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 717 (as enrolled)**Sponsor: Senator Norman D. Shinkle****Senate Committee: Commerce and Technology****House Committee: State Affairs****PUBLIC ACT 292 of 1988****Date Completed: 12-28-88*****RATIONALE***

Recently there has been an increase in the number of transient merchants who set up roadside or parking lot businesses for short periods of time. Although these merchants often sell many of the same products found in retail stores (cut flowers, T-shirts, etc.), there is no way to ensure that they collect and pay sales tax on the merchandise. Since merchants who do not collect and pay sales tax can sell their merchandise for less than what it would cost to purchase the merchandise from a merchant who does collect the tax, the merchant who does not collect the tax enjoys what many consider an unfair competitive advantage over a merchant who does. It has been suggested, therefore, that some mechanism be enacted to ensure that transient merchants collect and pay sales tax.

CONTENT

The bill would amend Public Act 51 of 1925, which provides for the licensure and regulation of transient merchants, to increase the amount of information required on a license application, permit the impoundment and public sale of goods offered for sale by unlicensed merchants, and broaden the category of merchants not covered by the Act. The bill would take effect July 1, 1988. Specifically, the bill would:

- Require applicants for a transient merchant license to include on their application to the county treasurer their Federal taxpayer and State employer identification numbers and number of employees, and to attach a copy of their Michigan sales tax license to the application (except for those who sell only food for human consumption as defined in a section of the General Sales Tax Act, who would be exempt from the requirement to attach a copy of their Michigan sales tax license to the application).
- Require the county treasurer to send a copy of the license and completed application to the State Treasurer within 10 days after issuing a license.
- Require the licensed transient merchant to display his or her license in full view at the location of the business.
- Increase the penalty provisions for those found guilty of violating the Act and revise procedures for local enforcement of the bill.

A person who violated the bill could be fined \$1,000 or 10% of the value of any property impounded as specified in the bill, whichever amount was greater, as well as court costs. (The current penalty is a maximum fine of \$100 and/or up to 90 days' imprisonment). If the county sheriff or local law enforcement officer had probable cause to

believe that a person was violating the bill, the officer would be required to impound all goods offered for sale by a transient merchant until the matter had been decided by a court of proper jurisdiction. The transient merchant could obtain his or her goods prior to adjudication by paying, either in cash or by security bond, \$1,000 or an amount equal to the value of the impounded goods, whichever was greater. If the transient merchant were convicted of violating the Act and failed to pay the fine and court costs within seven days after the date of conviction, the sheriff or law enforcement officer would have to sell the impounded goods by publishing notice in a newspaper of general circulation in the county at least five days prior to the sale. The notice would have to describe the property and state the time and place of the public auction at which the goods would go to the highest bidder. The officer would have to conduct the sale and would have to deposit from the proceeds of the sale, an amount equal to the fine and court costs with the court in which the transient merchant had been convicted. Any proceeds of the sale that exceeded the fine would have to be returned to the transient merchant. The bill specifies that any sheriff or local law enforcement officer who disposed of property in the manner provided for under the bill would not be liable to the transient merchant for the sale.

The bill would expand the list of those exempt from the requirements of the Act to include:

- A person who solicits orders by sample, brochure or sales catalog for future delivery or makes sales at residential premises by invitation of the owner or legal occupant of the premises.
- A person selling at an art fair or festival, or a similar event, at the invitation of the event's sponsor — if the sponsor is a governmental entity or nonprofit organization, if the person provides the sponsor with the person's sales tax license number, and if the sponsor provides a list of the event's vendors and their sales tax license numbers to the county and State treasurers.

MCL 445.371 et al.

FISCAL IMPACT

Senate Bill 717 would have no fiscal impact on State government. Passage of the bill would result in an indeterminate increase in revenue for counties. The revenue would result from fines and the sale of seized property by the county. The actual revenue would depend on the number and size of such fines and sales of seized goods.

OVER

ARGUMENTS

Supporting Argument

By requiring that transient merchants possess a sales tax license, the bill would help reduce unfair competition for retailers who pay sales tax on goods sold, and would ensure that the State was not deprived of important sales tax income from the sales of goods by transient merchants. The bill's provisions regarding specific procedures for local enforcement of the Act, as well as stiffer penalties for those found violating the Act, would help to regulate transient sellers of various goods.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.